

BUTLER COUNTY ELECTRIC COOPERATIVE ASSN., INC.

ORDINANCE NO. 46-206

**AN ORDINANCE OF THE CITY OF WICHITA, KANSAS,
GRANTING TO BUTLER RURAL ELECTRIC COOPERATIVE
ASSN., INC., ITS SUCCESSORS AND ASSIGNS, AN ELECTRIC
LIGHT, HEAT, AND POWER FRANCHISE AND PRESCRIBING
THE TERMS OF SAID GRANT AND RELATING THERETO.**

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,
KANSAS:

SECTION 1. DEFINITIONS.

For purposes of this franchise, the following words and phrases shall have the meanings given herein:

“Arterial Streets” – shall mean those portions of Right-of-Way designated as arterial streets by City of Wichita Code §11.96.100.

“Business Day” – shall mean a day which is not a Saturday, Sunday, or any day designated as a holiday by the Congress of the United State, by the State of Kansas, or by the City of Wichita.

“City” - shall mean the City of Wichita, Kansas.

“Company” - shall mean Butler Rural Electric Cooperative Assn., Inc.

“Customer” or “Consumer” - shall mean any person, firm, partnership, association, corporation, company or organization of any kind served by Company hereunder within the City.

“Downtown Area” - shall mean the area described as follows: Starting at a point on the east bank of the Arkansas River at Douglas, thence northerly along said bank of the River to Second Street; thence northeasterly to Greenway Boulevard; following said boulevard northerly to Central; following Central northeasterly to its junction with Waco; thence north on Waco to Pine, east on Pine to Market, south on Market to Central, east on Central to Washington, south on Washington to

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Waterman, west on Waterman to St. Francis, south on St. Francis to Kellogg, West on Kellogg to the east bank of the River; thence northerly following the east bank of the River to the point of beginning on Douglas.

“Electric Utility Service” - shall mean and include:

(i) all sales of electricity to all Customers at retail within the corporate limits of the City;

(ii) ancillary or unbundled electric services provided to all Customers at retail within the corporate city limits of the City when sold separately from kWh which shall include, but not be limited to:

- (a) reactive supply and voltage control,
- (b) scheduling,
- (c) system control and dispatch,
- (d) regulation and frequency response,

- (e) energy imbalance,
- (f) operating reserves,
- (g) supplemental reserves, and
- (h) spinning reserves; and

(iii) transmission and distribution of electricity when sold separately from energy to any person located within the city limits of the City.

“Electric Utility System” or “System” - shall mean an electric power system installed and operated in the City in compliance with applicable rules and regulations of the Federal Energy Regulatory Commission (FERC) and Kansas Corporation Commission (KCC), and their successors, which shall include, but not be limited to, the generation, transmission and distribution facilities, equipment and administrative services necessary to provide electric service for any use in the City, and such extensions, additions or reductions as may hereafter be made.

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“Emergency” - shall mean a reasonably unforeseen occurrence with a potential to endanger personal safety or health, or cause substantial damage to property, that calls for immediate action.

“Facilities” - shall mean electric light and power lines, together with all necessary or desirable appurtenances, including underground conduits, poles, towers, wires and other appurtenances.

“Gross Receipts” - shall mean all revenues received by the Company from providing Electric Utility Service within the corporate limits of the City but shall not include any administrative or non-recurring charges associated with the provision of Electric Utility Service within the corporate limits of the City.

“Person” - shall mean any individual, firm, partnership, association, corporation, company or organization of any kind.

“Public Project” - shall mean any project planned or undertaken by the City or any other governmental entity for construction, reconstruction, maintenance, or repair of public facilities or improvements, including without limitation streets, alleys, sidewalks, sewer system, water system, drainage system, Right-of-Way improvement, or any other purpose of a public nature.

“Public Project for Private Development” - shall mean a Public Project, or that portion thereof, arising solely from a request or requirement of a third party primarily for the benefit and use of a third party.

“Retail Wheeling” - shall mean the use of the Company’s transmission, distribution, and associated Facilities of its Electric Utility System to deliver electricity purchased by end use Customers located within the City from electric suppliers other than the Company.

“Right-of-Way” - shall mean only the area of real property in which the City has a dedicated or acquired right-of-way interest in the real property. It shall include the area on, below, or above the present and future streets, alleys, avenues, roads, highways, or boulevards dedicated or acquired as

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rights-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other nonwire telecommunications or broadcast service, easements obtained by utilities, or private easements in platted subdivisions or tracts. The term does not include property owned or held by the City but not typically considered right-of-way, including, but not limited to, City parks and reserves and City buildings.

SECTION 2. GRANT.

(a) There is hereby granted to Company the non-exclusive right, privilege, and franchise to construct, maintain, extend, operate, reconstruct, and replace Facilities for its Electric Utility System in, through, and along the Right-of-Way of the City for the provision of Electric Utility Services to the City, the inhabitants thereof, and persons and corporations beyond the limits thereof, for the full term of this franchise under the terms and conditions herein set forth.

(b) This franchise does not authorize the Company to use its existing Facilities, or to construct new Facilities, in order to provide cable television service, telecommunications service, network access service, internet access service, leased fiber optic services, video programming service, or any other telecommunications or telephony service to existing or potential customers, and such services are not permitted under this franchise.

(c) The Company must revise its franchise fee payments due to any expansion or reduction by annexation or contraction within a reasonable time after receipt of notice from the City, but in no event later than thirty (30) calendar days after receipt of such notice.

SECTION 3. TERM.

(a) The term of this franchise shall be until February 28, 2014.

(b) Upon ninety (90) days' written notice given by the City, the rate of compensation to be paid to the City hereunder pursuant to Section 4(b) shall be reopened and renegotiated to be effective on March 1, 2009.

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(c) Upon written request of either the City or the Company, this franchise shall be reopened and renegotiated at any time upon any of the following events:

- (i) changes in federal, state, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Company, including but not limited to the scope of the franchise granted to the Company or the compensation to be received by the City hereunder;
- (ii) changes in the structure or operation of the electrical power industry that materially affect any rights or obligations of either the City or the Company, including but not limited to: (A) the scope of the franchise granted to the Company, (B) the compensation to be received by the City hereunder, (C) the institution of Retail Wheeling or customer choice of electric supplier, or (D) the unbundling and separate pricing of the generation, transmission or distribution of Electric Utility Service; and
- (iii) any other material and unintended change or shift in the economic benefit that either the City or the Company reasonably relied upon and reasonably anticipated upon entering into this franchise.

(c) In any negotiation properly commenced pursuant to Section 3(b), the City and the Company shall negotiate in good faith in an effort to agree upon mutually satisfactory amendment(s). Failure of the City and Company to successfully renegotiate the materially affected provisions of this franchise under Section 3(b) shall give either party the right to terminate this franchise by giving written notice of termination within sixty (60) days of the event giving rise to the negotiations under subsection (b), in which case the franchise shall terminate 60 days after such notice is given. If neither party gives notice of termination within such time period, the franchise shall remain in effect according to its then existing terms.

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(d) Amendments under this Section, if any, shall be made by ordinance as prescribed by statute. The franchise shall remain in effect according to its terms pending completion of any renegotiation provided by subsections (b) and (c).

SECTION 4. COMPENSATION AND PAYMENTS TO THE CITY.

(a) In consideration of, and as compensation for, the franchise and privilege hereby granted, Company shall make an accounting to the City once each month of all its Gross Receipts during the preceding month. Such accounting shall be submitted by the fifteenth (15th) day of the month following the calendar month that is the subject of the accounting, and shall be accompanied by a report of the Company's Gross Receipts for the preceding month upon which fees are calculated.

(b) The Company shall pay to the City, at the time of making such report, an amount equal to five percent (5%) of the Gross Receipts of the Company during such preceding month. Such payments shall be made to the City under such additional procedures as are mutually agreed to by the Company and the City.

(c) In the event the accounting rendered to the City by the Company is found to be incorrect, then an adjustment shall be promptly made on the corrected amount. The City may accept any amount offered by the Company, but the acceptance thereof by the City shall not be deemed a settlement of such item if the amount is in dispute or later found to be incorrect. Such of the Company's books, records, documents, contracts and agreements as may be reasonably necessary for an audit of the Company's performance under this ordinance shall at all reasonable times and upon reasonable request be opened to the inspection and examination by the officers of the City and its duly authorized agents, auditors, and employees for the purpose of verifying said accounting. For purposes of this provision, the Company shall maintain appropriate records for three past years plus the current year.

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(d) For each and every month, or any part thereof, that the compensation provided for by this franchise remains unpaid after the same becomes due and payable to the City, there shall be added to such payment, as a late charge, a sum equivalent to the statutory rate for interest on the unpaid amount. Such late charge shall be applicable to sums that are delinquent as well as any sums due the City as the result of an audit or review of the Company's records.

(e) Except as provided herein, the payments and compensation herein provided shall be in lieu of all other licenses, taxes, charges, and fees imposed by the City. Company shall continue to be responsible for and subject to the following licenses, taxes, charges and fees:

- (i) the usual general property taxes and special ad valorem property taxes;
- (ii) sales and excise taxes;
- (iii) any permit fees and charges for pavement cuts or other permit fees and charges based on restoring premises to their previous condition; and
- (iv) charges made for privileges which are not in any manner connected with the provision of Electric Utility Service, as such.

(f) In the event that either state or federal governmental entities authorize or require, or Company on its own initiative engages in: (1) Retail Wheeling or customer choice of electric supplier; or (2) the unbundling and separate pricing of the generation, transmission or distribution of Electric Utility Service(s), then the revenues obtained by Company from these activities from service provided within the corporate limits of the City shall be included in Company's Gross Receipts for the purpose of calculating fees due to the City hereunder.

SECTION 5. USE OF RIGHT-OF-WAY.

(a) Rules and Regulations. In its use of Right-of-Way under this franchise, the Company shall be subject to all rules, regulations, policies, resolutions and ordinances now or hereafter adopted or promulgated by the City in the reasonable exercise of its police power. In addition, the Company shall be subject to all rules, regulations, policies, resolutions, and ordinances now or hereafter

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adopted or promulgated by the City relating to permits, fees, sidewalk and pavement cuts, utility location, construction coordination, screening, and other requirements on the use of the Right-of-Way in the reasonable exercise of its police power.

(b) Subordinate to City Use. The Company's use of Right-of-Way shall in all matters be subordinate to the City's use of the Right-of-Way for any public purpose. The Company shall coordinate the installation of its Facilities in the Right-of-Way in a manner that minimizes adverse impact on Public Projects, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Projects so as not to conflict with such Public Projects.

(c) Restoration. All earth, materials, sidewalks, paving, crossings, utilities, Public Projects, or improvements of any kind located within the Right-of-Way that are damaged or removed by the Company in its activities under this franchise shall be fully repaired or replaced promptly by the Company at its sole expense and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto.

(d) Public Project for Private Development. The Company shall not be responsible for the expenses of relocation to accommodate any new Public Project for Private Development initiated after the effective date of this ordinance. The expenses attributable to such a project shall be the responsibility of the third party upon the request and appropriate documentation of the Company. Before such expenses may be billed to the third party, the Company shall be required to coordinate with the third party and the City on the design and construction to ensure that the work required is necessary and done in a cost effective manner. Upon the request of the Company or the third party, the allocation of expenses attributable to the project shall be made in the reasonable determination of the City. Eligible third parties may request to have the City specially assess those expenses billed by the Company under this section.

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(e) Exclusion of Certain Locations/Facilities. Prior to the Company's installation of any Facilities in the Right-of-Way and after it provides the City with its proposed plans for the Facilities, the City may in its reasonable discretion designate certain locations or Facilities in the Right-of-Way to be excluded from use by Company for its Facilities, including but not limited to any Facility or location that in the reasonable judgment of the City Engineer is incompatible with the proposed Facilities or would be rendered unsafe or unstable by the installation. The City Engineer may further exclude certain other Facilities that have been designated or planned for other use or are not otherwise available for use by the Company due to engineering, technological, proprietary, or legal limitations or restrictions as may be reasonably determined by the City. The City shall provide a written explanation for any denial for a particular location and shall work with the Company to identify other suitable routes.

(f) Location, Type and Design of Facilities Subject to Approval.

(i) The design, location, and nature of all Facilities to be placed in the Right-of-Way shall be subject to the reasonable review and approval of the City Engineer. This is a means to properly manage and control all Right-of-Way usage in the City, and to protect the public health, safety, and welfare. The review and approval is to ensure efficient coordination relating to Right-of-Way use relating to public and private utilities and to evaluate the configuration and size of Facilities that may be located in the Right-of-Way.

(ii) When the Company is allowed to place Facilities above ground in accordance with Section 7, the Company may attach its Facilities to an existing utility pole pursuant to a properly executed agreement with the pole owner, provided, however, that any necessary replacement of the pole in order to accommodate the attachment shall be subject to the proper exercise of the City's police powers, and in no instance shall the Company erect an additional pole within an existing aerial pole line absent the City's prior authorization.

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(iii) Above-ground pedestals, above-ground vaults, or other similar above-ground Facilities, may be installed only if approved by the City where alternative underground Facilities are not feasible or where underground requirements are otherwise waived pursuant to Section 7. Such above-ground Facilities shall generally be located behind the sidewalk where feasible and when placed along arterial streets shall be screened from public view by ornamental grasses or the equivalent when requested by the City. The Company shall be responsible for the installation or restoration of such screening; the City shall be responsible for routine maintenance.

(g) Right-of-Way Management Code. The City reserves its rights to adopt a right-of-way management and construction standards ordinance of general applicability pursuant to its public health, safety and welfare authority which shall apply to this franchise except where inconsistent with a material term of this franchise and the Company reserves its rights to recover such costs to the extent provided by applicable law.

(h) Permit Requirements.

(i) This franchise establishes the general rules and scope of authority for the Company to construct and maintain its Electric Utility System within the Right-of-Way. The Company is still required to obtain individual permitting approval from the City Engineer prior to engaging in actual construction of its specific Facilities within the Right-of-Way.

(ii) Except in the case of an emergency situation, prior to any excavation within the Right-of-Way, the Company shall obtain a permit, pay all applicable fees, and perform such work in accordance with applicable provisions of the City Right-of-Way Management Code, and any ordinances or regulations that may be adopted by the City regarding excavation work

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(i) Construction Plans. At least ten (10) business days before the beginning of any installation, removal or relocation of its Facilities greater in length than 660 feet the Company shall submit detailed plans of the proposed action to the City Engineer. The City Engineer shall, within ten (10) business days of receipt of such plans, either approve the plans or inform the Company of the reasons for disapproval. The Company shall designate a responsible contact person with whom representatives of the City Engineer can communicate on all matters relating to Facilities installation and maintenance.

(j) As-Built Drawings. The Company shall keep and maintain accurate records and as-built drawings, in electronic format, of all underground Facilities (except customer service lines) constructed, reconstructed, or relocated in the Right-of-Way of arterial streets commencing six (6) months after the effective date hereof. Such Facilities shall be horizontally and vertically located at least every 100 feet and at any alignment change. All points of Facilities shall be horizontally located from street centerline, or section or quarter section lines or corners. Vertical locations on all points of Facilities shall consist

of elevations in either City datum or United States Geological Survey datum. The Company shall cooperate promptly and fully with the City and take all reasonable measures necessary to provide accurate and complete information regarding the nature and horizontal and vertical location of its existing Facilities located within Right-of-Way when requested by the City or its authorized agents for a Public Project. Such location and identification shall be at the sole expense of the Company without expense to the City, its employees, agents, or authorized contractors.

(k) Wires. Where practicable, wires shall be placed nineteen (19) feet or more above the level of the street, except new wires shall be placed up to twenty-two (22) feet above the level of the street where reasonably requested by the City. Where practicable, any poles placed in the street Right-of-Way shall be located on the lot line and six (6) feet inside the curb line.

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(l) Street Closure. Except in the case of an emergency situation, the Company shall notify the City not less than twenty (20) working days in advance (such notice to be adequate for timely notice on the governing body agenda under City procedures) of any construction, reconstruction, repair, or relocation of Facilities that would require any street closure that reduces traffic flow to less than two lanes of moving traffic. Except in the event of an Emergency, no such closure shall take place without prior authorization from the City. In addition, all work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected in conformance with the latest edition of the Manual of Uniform Traffic Control Devices unless otherwise agreed to by the City.

(m) Relocation for Public Projects. The Company shall coordinate with the City on the design and placement of Facilities in the Right-of-Way during and for the design of Public Projects. At the request and sole expense of the Company, the City may include design for Facilities in the design of Public Projects. Upon request by the City and within the time period specified in the City's request, the Company shall locate, remove, relocate, or adjust any Facilities located in Right-of-Way if reasonably necessary for a Public Project. Such location, removal, relocation, or adjustment for a particular Public Project shall be performed by the Company once without expense to the City, its employees, agents, or authorized contractors and shall be specifically subject to rules and regulations of the City pertaining to such. Such relocation or adjustment shall be completed as soon as possible within the time set forth in any request by the City for such relocation or adjustment. If additional location, removal, relocation, or adjustment becomes necessary as a result of inaccurate or mistaken information provided by the Company or City, the party which provided such inaccurate or mistaken information shall be responsible for costs associated with such additional location, removal, relocation, or adjustment without expense to the other party. The City will use its best efforts, but is not required, to continue to provide a location in the Right-of-Way for the Company's Facilities as

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part of a Public Project, provided that the Company has cooperated promptly and fully with the City in the design of its Facilities as part of the Public Project.

(n) Protect Facilities. It shall be the responsibility of the Company to take adequate measures to protect and defend its Facilities in the Right-of-Way from harm or damage. If the Company fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City or its authorized contractors except to the extent the City or its authorized contractors are responsible for the harm or damage by their negligence or intentional conduct. The Company shall be responsible to the City and its agents,

representatives, and authorized contractors for all damages, including but not limited to delay damages, repair costs, down time, construction delays, penalties or other expenses of any kind, arising out of the failure of the Company to perform any of its obligations under this franchise except to the extent another party is responsible for the harm or damage by its negligence or intentionally caused harm. The above general provisions notwithstanding, the City and its authorized contractors shall take reasonable precautionary measures including calling for utility locations through Kansas One Call and exercising due caution when working near Company Facilities.

(o) ULCC. The Company shall become and remain a member of and participate in the Utility Location and Coordination Council established by ordinance of the City.

(p) Technical Standards. All technical standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Right-of-Way shall be in accordance with applicable present and future federal, state, and City law and regulation, including but not limited to the most recent standards of the Kansas Corporation Commission and the Kansas Department of Transportation, or such substantive equivalents as may hereafter be adopted or promulgated. The standards established in this paragraph are minimum

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standards and the requirements established or referenced in this franchise may be in addition to or stricter than such minimum standards.

(q) Conservation of Right-of-Way. The City encourages the conservation of Right-of-Way by the sharing of space by all utilities. Notwithstanding any provision of this franchise prohibiting third party use, to the extent required by federal or state law, the Company will permit any other franchised entity, by appropriate contract or agreement negotiated by the parties to use any and all Facilities constructed or erected by the Company.

(r) Structure Moving. On the request of any applicant, the Company shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the applicant, and the Company may require such payment in advance. The Company shall be given not less than fifteen (15) calendar days' written notice from the applicant detailing the time and location of the moving operations, and not less than twenty-four (24) hours' advance notice from the applicant advising of the actual operation. However, the City shall not be liable for any such expense for the moving of houses or structures by the City or its contractors.

(s) Conduit. If the Company, in its sole discretion, determines that it has spare ducts in its underground conduits, or spare pins, crossarms, or space on any of its poles not then necessary for the provision of Electric Utility Service, and not needed for future anticipated load growth or Emergencies, the Company may permit the City to use one such duct in each conduit, or reasonable spaces on poles, or both, for the City's police and fire alarm wires, traffic control wires or cable, fiber-optic lines connecting City facilities, or other similar, appropriate non-commercial uses, provided that such use by the City is in compliance with the National Electric Safety Code and at the expense of the City. If the Company constructs or extends additional conduits or erects additional poles, the City, at the City's sole expense, may require the Company to provide one such duct in each conduit, or reasonable space on poles, or both, for the City's own use as aforesaid.

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(t) Commercial Purposes. City shall not sell, lease or otherwise make available its rights to use the Company's Facilities as set forth herein to any third party for commercial purposes. Such rights are provided solely for the non-commercial use of the City or other

governmental entity. However, this restriction shall not prevent the City from using the services of a third party commercial entity to manage or operate the City's facilities on behalf of the City, so long as no resale or other commercial use of such facilities shall occur.

SECTION 6. WORK BY OTHERS.

(a) The City reserves the right to lay, and permit to be laid, storm sewer, gas, water, wastewater and other pipe lines, cables, and conduits, and to do and permit to be done any underground or overhead work that may be necessary or proper in, across, along, over, or under the Right-of-Way occupied by the Company. The City also reserves the right to change, in any manner, any curb, sidewalk, highway, alley, public way or street. In permitting such work to be done, the City shall not be liable to the Company for any damage so occasioned, but nothing herein shall relieve any other Person from responsibility for damages to the Facilities of the Company.

(b) If the City shall require the Company to adapt or conform its Electric Utility System, or in any way or manner to alter, relocate, or change its property to enable any other Person to use, or use with greater convenience, said Right-of-Way, the Company shall not be bound to make any such changes until such other Person shall have undertaken, with good and sufficient bond, to reimburse the Company for any cost, loss, or expense which will be caused by, or arise out of such change, alteration, or relocation of the Company's property. Provided, however, that the City shall never be liable for such reimbursement due to the Company from such Person.

SECTION 7. UNDERGROUND REQUIREMENTS.

(a) The Company shall use commercially reasonable efforts to provide that all Facilities constructed, replaced, or relocated in the Right-of-Way after the date hereof shall be

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placed underground unless, because of the nature of the Facility or the standard construction or operating practices of the Company, the Company requests approval for such Facilities to be placed above ground. Upon receipt of such request, the City Engineer shall review and approve the plans for the above ground placement of Facilities in accordance with reasonable procedures established by the City, and subject to such reasonable conditions as the City may establish for public safety, appearance, or coordination with Public Projects. Where there are obstructions in the Right-of-Way, such as trees, shrubs, other utilities, commercial signs, man-made structures, or other like obstructions that make the cost of such underground burial unreasonable, the Company may request waiver of this requirement, in which event the City will not unreasonably withhold consent.

(b) All new Facilities installed in the Downtown Area shall be installed underground. Additionally, all replacement or upgrading of Facilities in the Downtown Area shall be installed underground.

(c) The City may require any portions of Company's Facilities in the Downtown Area that are not presently underground to be placed underground. The City shall provide reasonable written notice to the Company of the City's request that such Facilities be placed underground. The Company shall promptly undertake the removal and replacement of such Facilities to underground locations at no cost to the City.

(d) Except as may otherwise be provided by other applicable ordinances of the City, where reasonable and appropriate and where adequate Right-of-Way exists, the Company shall place above-ground Facilities underground in conjunction with City capital

improvement projects and/or at specific locations requested by the City provided that such placement is practical, efficient, and economically feasible.

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(e) Where not otherwise required to be placed underground by this franchise, the Company's Facilities shall be located underground at the request of the adjacent property owner, provided the placement of such Facilities shall be consistent with the Company's construction and operating standards and provided that property owner making the request pays the Company for such undergrounding pursuant to the Company's applicable tariffs and terms and conditions.

(f) When undertaking a project of undergrounding, the City and the Company shall, to the extent practicable, work with other utilities or companies that have their lines overhead to have all lines undergrounded as part of the same project. When other utilities or companies are placing their lines underground, the Company shall cooperate with these utilities and companies and undertake to underground Company's Facilities as part of the same project where feasible; provided, however, the Company shall not be required to pay the costs of any other utility or company.

(g) The Company shall use commercially reasonable efforts to coordinate its installation of new underground Facilities with preexisting underground facilities of other companies. The underground requirements of this subsection shall not apply to the maintenance and repair of existing Facilities, as determined by the City Engineer, except as may be required in Section 7(b).

SECTION 8. INDEMNITY AND HOLD HARMLESS; LIABILITY; INSURANCE; SURETY BOND.

(a) The Company shall hold and save the City, its officers, employees, agents, and authorized contractors, harmless from and against all claims, damages, expense, liability, and costs including attorney fees, to the extent occasioned in any manner by the Company's occupancy of Right-of-Way, except to the extent that such were caused by the negligence or intentional conduct of the City, its officers, employees, agents, or authorized contractors. In the event a claim shall be made or an action shall be instituted against the City growing out of such occupancy of the Right-of-Way by Facilities of the Company, then upon notice by the City to the Company, the Company will assume responsibility for the defense of such actions at the cost of the Company, subject to the

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option of the City to appear in and defend, at its own cost, any such case. However, the Company shall have no duty to defend any such action to the extent that such action has resulted from the negligence or intentional conduct of the City, its officers, employees, agents, or authorized contractors.

(b) The Company shall maintain throughout the term of this franchise insurance insuring the City and the Company with regard to all damages set forth in paragraph (a) of this section, in the minimum amounts of:

- (i) \$1,000,000 for bodily injury or death to a person
- \$3,000,000 for property damage resulting from any one accident;
- (ii) \$50,000 for property damage resulting from any one accident;
- (iii) \$1,000,000 for all other types of liability.

Should Company elect to self-insure for this purpose, the Company shall possess a certificate of authority from the Kansas Insurance Commissioner.

(c) On or before the Effective Date of this franchise (or the date of first use of the Right-of-Way under this franchise, if later), and as a condition precedent to the effectiveness of the franchise, the Company shall deposit with the City a surety bond in the amount of

\$100,000, payable to the City and securing the payment of repair or maintenance costs incurred as a result of any defects, impairments, or substandard condition in the Right-of-Way caused by the work of the Company or resulting from the Company's activities in the Right-of-Way. The required surety bond must be with good and sufficient sureties, issued by a surety company authorized to transact business in the State of Kansas, and satisfactory to the City Attorney in form and substance.

SECTION 9. REGULATORY PROVISIONS.

(a) The Company shall maintain an office for the benefit of Customers and the City. The location of the office shall be determined solely by the Company. The Company shall also maintain

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a location in the City to receive payment of bills from Customers within the City after the number of the residential Customers exceeds one thousand. The Company shall maintain a local or toll-free telephone number for service requests, outage reporting, and other notices from its Customers. The Company shall designate and maintain an agent, familiar with the Facilities, who is responsible for timely satisfaction of the information needs of the City and other users of the Right-of-Way. The name and telephone number of the Company's agent shall be provided to the City, and such information shall be updated as required to keep the City informed.

(b) Nothing contained in this section shall be construed as waiving the rights of either the City or the Company to review in the courts, in such manner as is now or may hereafter be provided by law, any rules, findings, or orders of a regulatory body, the Company, or the City.

SECTION 10. STREET LIGHTING.

The City shall have the option at any time after the taking effect of this franchise, to acquire title to the wiring, poles, conduits, lamps, and other appurtenances (exclusive of the power house and generating equipment) which may be at said time used or useful exclusively in any street lighting of the City. Such property and facilities shall be sold to the City by Company, its successors or assigns, at the fair cash value of the physical properties. In the event of the exercise of the option by the City to take over said street lighting property, there shall be no allowance to the Company, its successors or assigns, for any element or item of intangible value, blue sky, nor any good will or going concern value, nor any "Severance Damages," or stranded costs or stranded value. Nothing herein shall be construed to in any manner preclude or prevent the City from acquiring title by any means authorized by law to any part, portion or all of the electric property of the Company, its successors or assigns or preclude or prevent Company from selling its street lighting system to a third party or give City a right of first refusal or option of any kind in connection with such a transaction. In the event Company sells its said street

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lighting system to a third party, the provisions of this Section shall be null and void and of no further effect.

SECTION 11. ASSIGNMENT AND TRANSFER.

This franchise shall be assignable only in accordance with the laws of the State of Kansas, as the same may exist at the time when any assignment is made, provided, however, that the franchise may be assigned by the Company without action by the City to any entity which succeeds to all or substantially all of the electric utility business of the Company. Provided, however, in the event that the Company is no longer required to obtain the approval of the Kansas Corporation Commission for an assignment, such

assignment shall be subject to the consent of the City, which consent shall not be unreasonably withheld. In the event of an assignment to a successor, the Company shall be released from all obligations which are assumed in writing by such successor and the assignee shall have executed an assumption of the franchise being assigned.

SECTION 12. TERMINATION AND FORFEITURE OF FRANCHISE.

(a) In addition to all other rights and powers retained by the City under this franchise, the City reserves the right to terminate the franchise and all rights and privileges of the Company hereunder, in the event of a material failure on the part of the Company, its successors or assigns, to comply with any of the provisions of this ordinance, or if the Company, its successors or assigns, should do or cause to be done any material act or thing prohibited by or in violation of the terms of this ordinance. In such event, the Company, its successors and assigns, shall forfeit all rights and privileges granted by this ordinance and all rights hereunder shall cease, terminate and become null and void, provided that said forfeiture shall not take effect until the City shall carry out the following proceedings:

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(i) Before the City terminates the franchise, it shall first serve a written notice upon the Company, and upon the trustee or trustees in any deed of trust securing bonds of the Company of record in Sedgwick County, Kansas, or the office of the Secretary of State of Kansas, by mailing notice to the Company and to such trustee or trustees to the address designated in such trust deed, setting forth in detail in such notice the neglect or failure complained of.

(ii) The Company shall have sixty (60) calendar days thereafter in which to comply with the conditions of this franchise.

(iii) If, at the end of such sixty day period, the City determines that the conditions of such franchise have not been complied with by the Company and that such franchise is subject to termination by reason thereof, the City, in order to terminate such franchise, shall enact an ordinance setting out the grounds upon which the franchise is to be terminated.

(iv) If within thirty (30) calendar days after the effective date of said ordinance the Company shall not have instituted an action, either in the District Court of Sedgwick County, Kansas, or some other court of competent jurisdiction to determine whether or not the Company has violated the terms of this franchise and that the franchise is subject to termination by reason thereof, such franchise shall be terminated at the end of such thirty day period.

(v) If within such thirty day period the Company does institute an action, as above provided, to determine whether or not Company has violated the terms of this franchise and that the franchise is subject to termination by reason thereof and prosecutes such action to final judgment with due diligence, then, in that event, in case the court finds that the franchise is subject to termination by reason of the violation of its terms, this franchise shall terminate thirty (30) calendar days after such final judgment is rendered.

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(b) In the event of a final adjudication of bankruptcy of the Company under Title 11 of the United States Code, the City shall have full power and authority to terminate, revoke, and cancel any and all rights granted under this franchise.

(c) The failure of the Company to comply with any of the provisions of this franchise or the doing or causing to be done by the Company of anything prohibited by or in violation of the terms of this franchise shall not be a ground for the termination thereof when such act

or omission on the part of the Company is due to any cause or delay beyond the control of the Company, its successors and assigns, or bona fide legal proceedings.

SECTION 13. RIGHTS AND DUTIES OF COMPANY UPON EXPIRATION OR TERMINATION OF FRANCHISE.

Upon expiration of this franchise, whether by lapse of time, by agreement between Company and City, or by forfeiture thereof, the Company shall have the right to remove any and all of its Facilities used in its Electric Utility Service within a reasonable time after such expiration or termination, unless the City notifies the Company in writing that the City or a third party intends to purchase the Facilities. In the event the City notifies the Company that the Facilities are to be purchased, the Facilities shall be sold to the City or the third party by Company, its successors or assigns, for the compensation provided by applicable law. In the event the City notifies the Company that the Facilities can be removed by the Company, it shall be the duty of the Company, immediately upon such removal, to restore the streets, avenues, alleys, parks and other public ways and grounds from which said Facilities are removed to as good condition as the same were before said removal was effected.

SECTION 14. ACCEPTANCE

Prior to the effective date of this ordinance the Company shall file with the City Clerk of the City of Wichita its acceptance in writing of the provisions, terms and conditions of this ordinance, which acceptance shall be duly acknowledged before an officer authorized by law to

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administer oaths. When so accepted the ordinance and acceptance shall constitute a contract between the City and the Company subject to the provisions of the laws of the state of Kansas.

SECTION 15. CONDITIONS OF FRANCHISE.

This contract, franchise, grant and privilege is granted and accepted under and subject to all applicable laws and under and subject to all of the orders, rules, and regulations now or hereafter adopted by governmental bodies now or hereafter having jurisdiction, and each and every provision hereof shall be subject to acts of God, fires, strikes, riots, floods, war and other causes beyond Company's control.

SECTION 16. RESERVATION OF RIGHTS.

(a) The City specifically reserves its right and authority as a Customer of the Company and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning the Company's rates and services to ensure the rendering of efficient Electric Utility Service at reasonable rates, and the maintenance of the Company's property in good repair and the Company reserves its right to resist such participation.

(b) In granting its consent hereunder, the City does not in any manner waive its regulatory or other rights and powers under and by virtue of the laws of the State of Kansas as the same may be amended, nor any of its rights and powers under or by virtue of present or future ordinances of the City.

SECTION 17. NOTICES.

Except in Emergencies, all notices by either the City or the Company to the other shall be made by either depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by Certified Mail, return receipt requested,

shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any

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notice given by facsimile is deemed received by the next business day. Emergency notices shall be provided by telephone, with written notice immediately following by facsimile. All notices shall be addressed to the City as follows:

City Clerk
455 N. Main Street
Wichita, Kansas 67202-1635

Notice to Company shall be addressed to the Company as follows:

Butler Rural Electric Cooperative Assn., Inc.
Attn: Dustin Pullian
216 S. Vine
El Dorado, Kansas 67042

Notice shall be given as required by the terms of this ordinance and for all Emergencies. Notice shall be provided to the above-named addressees unless directed otherwise in writing by City or Company.

SECTION 18. NON-WAIVER PROVISION.

The failure of either party to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by either party unless said waiver or relinquishment is in writing and signed by the parties.

SECTION 19. SEVERABILITY.

If any clause, sentence, or section of this ordinance, or any portion thereof, shall be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be

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invalid; provided, however, the City may elect to declare that the entire agreement is invalidated if the portion declared invalid is, in the judgment of the City, an essential part of this ordinance.

SECTION 20. GOVERNING LAW; VENUE.

(a) The rights and privileges granted to the Company by this franchise shall at all times be subordinate and inferior to the rights of the public in and to the ordinary use of Right-of-way, and nothing in this franchise shall be considered as a surrender by the City of its right and power to use and relocate the use of its Right-of-Way.

(b) The franchise and the rights herein granted are subject to the provisions of existing federal and state laws and those hereafter enacted pertaining to the granting of franchises.

(c) The obligations and undertakings of both parties hereto shall be performed at Wichita, Sedgwick County, Kansas. In the event that any legal proceeding is brought to enforce the terms of this franchise, the same shall be brought in State or Federal courts, as appropriate, having jurisdiction for Sedgwick County, Kansas.

SECTION 21. EFFECTIVE DATE OF ORDINANCE.

This Ordinance shall be effective upon its final passage and publication once in the official city paper.

PASSED AND APPROVED by the governing body of Wichita, Kansas, this date July 20, 2004.

Carlos Mayans, Mayor

ATTEST:

Karen Sublette, City Clerk
APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law